

## Introduction

This book is about how mass incarceration transformed immigration enforcement and border policing. It is about how incarcerating over two million people in the United States gave impetus to a federal immigration initiative—the Criminal Alien Program—designed to purge noncitizens from dangerously overcrowded jails and prisons. Expanded in the 1980s to relieve prison overcrowding, the Criminal Alien Program quietly set off a punitive turn in immigration enforcement that has fundamentally altered detention, deportation, and criminal prosecutions for immigration violations. When I began researching this book, the Border Patrol had recently expanded the Criminal Alien Program in Arizona under a high-profile border enforcement campaign known as Operation Safeguard, launched in 1995. In an internal memo on Safeguard, the Border Patrol referred to Arizona as “critically important to the Administration’s multi-phased border control and criminal alien removal strategies.”<sup>1</sup> Safeguard infused the Tucson Border Patrol Sector with federal funding for one hundred additional agents, one thousand more detention beds, and biometric technology for criminal background checks, and it established the Institutional Removal Hearing Program to carry out fast-track deportations directly from Arizona prisons and jails.<sup>2</sup> Arizona quickly acquired some of the highest levels of apprehensions and “criminal alien removals” along the U.S.-Mexico border.

Alongside “criminal alien removals,” the Arizona-Sonora border had also become the epicenter of migrant deaths. Anticipating a rise in migrant fatalities as border policing pushed unauthorized flows further into the hostile desert, Safeguard also included funding for search and rescue operations. By 2001, immigrant- and border-rights activists convened a border summit in Tucson, Arizona, denouncing migrant deaths and what they called a “humanitarian crisis” caused by U.S. immigration and border policies. This was the context I stepped

into over a decade ago—a post-civil rights enforcement arena that drew as much on civil- and human-rights discourses as it did those of crime.<sup>3</sup>

In 2002, I volunteered to go door to door in five Southern Arizona border communities to survey residents about their experiences with the U.S. Border Patrol. Border residents, I quickly learned, are at once regulators and regulated. As law enforcement agents, suspected smugglers, immigrants, or long-term residents, they have become directly and indirectly involved in policing even as they are themselves policed. Going door to door, I met several residents of Mexican ancestry who were the immediate relatives or friends of law enforcement agents, or perhaps were employed in some aspect of security-related industries, and many more who had been pulled over on allegedly criminal grounds, as suspected smugglers. I met U.S. citizens under house arrest for immigration offenses like smuggling and some residents whose family members had had their legal status revoked and had been retroactively deported after president Bill Clinton signed the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which greatly expanded criminal grounds for deportation.

Border residents' testimonies differed from historical accounts and my family's nearly one-hundred-year history of migration and enforcement. My grandfather migrated to Chicago from Mexico in the 1920s and was among those deported in the mass repatriations of Mexicans during the Great Depression.<sup>4</sup> My father migrated to the United States in 1942 as one of the first contract workers under the Bracero Program, a bilateral labor-recruitment program invented to meet wartime labor shortages. This was during the Jim Crow era when it was not uncommon to labor in towns where shopkeepers posted signs that read "No Dogs, No Negros, and No Mexicans."<sup>5</sup> For two decades, he migrated to (and was deported from) the United States as both a contract and an undocumented worker, eventually settling in racially segregated Chicago with my mother and siblings as legal permanent residents. My family's immigration status shaped my own transnational upbringing in the United States and Mexico throughout the seventies and eighties. And although I am a U.S. citizen, I have had to prove to border agents time and time again that I'm not an immigrant, or a foreigner, and that my papers are "legal," whenever I have reentered the United States from Mexico.

The post-1996 enforcement I witnessed in Southern Arizona defied my expectations of how border policing works. I'd stepped into a complex field—one in which the Border Patrol played a more direct role in local crime control and worked in partnership with local law enforcement, immigrant-rights advocates, and, at times, migrants and border residents themselves. Enforcement extended beyond the traditional relations among white Border Patrol agents, growers, unions, and Mexican migrants or between inspectors and border crossers. Instead of historical practices to regulate labor migration and cross-border commerce, I observed enforcement actions designed to manage crime. Security-related industries also played a more prominent role in local economies. And, instead of an overtly racial language of keeping out “wetbacks,” agents—some of whom self-identified as “Hispanic,” “Latina/o,” or “Mexican-American”—and other players involved in border enforcement drew on a language of “rights” and “crime.”

To navigate this complex enforcement field, I dug into archives in order to understand what legal changes and processes had led the Border Patrol to evaluate immigrants and border crossers in terms of criminal history. I knew from conversations with Border Patrol agents that detention beds determined the capacity of the system. The availability of beds influenced the daily decisions of agents about whether or not to enforce the law against someone. Taking the advice of INS historian Marian Smith, I “followed the money” and traced the history of the detention-bed quota. That story, buried in congressional hearings and INS records, uncovered the roots of the Criminal Alien Program, which, I discovered, emerged from the prison-bed crisis that began in the eighties and the post-civil rights crackdown on crime. That crackdown particularly targeted African Americans through disparate sentencing and, I argue, fueled a need to pull noncitizens out of regular prisons in order to create space for newly criminalized people of color.

Today, the Criminal Alien Program relies on biometric information technology and detention beds to target what are referred to as “priority aliens,” or those with criminal records, for arrest and removal, and for criminal prosecution for unauthorized entry and reentry after deportation.<sup>6</sup> In fact, reentry after deportation has become a leading charge in sentencing people to federal prison.<sup>7</sup> Latinas/os make up almost half of all sentenced offenders, mostly for immigration violations such as

reentry.<sup>8</sup> What began as a program to purge criminals from jails and prisons, which was CAP's original mission, has become one of the chief mechanisms driving federal criminal prosecution and imprisonment for immigration offenses.<sup>9</sup>

Combining a short history of CAP and "street-level" observations of its implementation, I also embarked on an ethnography of criminal immigration enforcement in Arizona-Sonora border towns.<sup>10</sup> In the field, I became less interested in the spectacle of the corrugated metal wall, stadium lights, and deployment of the National Guard, turning my attention to invisible sites where the merger of immigration and crime control forged ahead—a migrant shelter for deportees, the port of entry, a federal courtroom, or a detention center. The most memorable observations, however, occurred on remote desert roads and public spaces of Southern Arizona border communities, through my own experiences with immigration enforcement. In Southern Arizona, I was often stopped, pulled over, searched, and interrogated—by both white and Latina/o border agents—as a potential immigrant or suspected smuggler at the port of entry or on the street, as if to put me in my place. This occurred with regularity, which I logged along with other public observations of arrest and policing, prosecution and incarceration, detention and deportation.

Following a local campaign to block construction of an immigrant prison, I began visiting three migrant shelters in Mexico once or twice a week in order to help gather the testimonies of formerly incarcerated migrants.<sup>11</sup> My early visits were admittedly awkward.<sup>12</sup> I was often the only woman in a room filled with new migrants in transit and recent deportees from U.S. correctional facilities. I remember my first visit vividly. I was embarrassed to look, afraid of meeting their eyes, of seeming disrespectful because I wasn't in the kitchen with other women volunteers who had prepared the food. I couldn't help but look at the ground, notice their feet—old shoes, sandals, and no socks. I looked up slowly, noticing their dusty clothes, hands, and, finally, their eyes. I recognized them not as the immigrants represented in public discourse but as young men from my family's hometown in Mexico where I was raised. I was relieved and yet so uncomfortable, haunted by the thought that some of them might end up dead or in prison.

The shelters serve first-time border crossers and former deportees, mostly men from Mexico and Central America arrested on the border and in the interior.<sup>13</sup> I met deportees with criminal records and those without. I met migrants processed through civil proceedings and others who were criminally prosecuted for immigration offenses. I met first-time border crossers and English-speaking deportees with a long history of settlement in the United States. I met migrants removed on criminal grounds (under CAP) and others who were granted voluntary departure—a form of relief with fewer penalties and greater possibilities of future migration.

Migrants' perspectives on enforcement practices were essential, particularly when they shared their experiences with the border agents, Mexican officials, local law enforcement, smugglers, and vigilantes. Among them I also interviewed smugglers, mostly low-level employees, after meeting deportees in Mexican shelters who had been convicted on smuggling charges in the United States.<sup>14</sup>

Agents from the Tucson Sector of the U.S. Border Patrol and what became Immigration and Customs Enforcement (ICE), officials from the Instituto Nacional de Migración, Grupo Beta, and the Office of the Mexican Consulate also generously shared their perspectives and expertise on arrest and repatriation of migrants with and without convictions, antismuggling initiatives, and the impact of border security on local economies.<sup>15</sup> I also interviewed the directors, staff, and founding members of migrant advocacy NGOs, particularly those involved in providing legal services to detained migrants in removal proceedings as well as those monitoring human- and civil-rights abuses.

At the time of my fieldwork, anti-immigrant and militia groups were actively mobilizing in Southern Arizona. As much as I'd tried to ignore them, I couldn't, as they were also key players. To better understand their perspective and actions, I attended their local meetings and interviewed local ranchers, the Mexican Consulate, and migrants themselves regarding vigilantism in Southern Arizona.

Throughout the fieldwork, I shuttled back and forth between Arizona and Sonora, Mexico. For transportation, I relied on local makeshift shuttles, or *camionetas*, which transport border commuters to and from the border, and which border agents often associated with the smuggling

industry. From the predominantly Latina/o border towns of Douglas, Agua Prieta, and Nogales, Arizona/Sonora, as well as, to a lesser extent, Altar, Sonora, and Sasabe, Arizona, I would go up the interstate to observe deportation hearings in a detention center in Florence, Arizona—a prison town sixty-one miles from Phoenix. With a population of twenty-five thousand, half of whom are imprisoned, Florence is home to an assortment of nine federal and privately run correctional and detention facilities.<sup>16</sup> There, I witnessed deportation proceedings and know-your-rights workshops for detained migrants from all over the world, as well as removal proceedings for formerly incarcerated Mexican and Central American immigrants under the Criminal Alien Program. In Tucson, I sat through criminal prosecution hearings under Operation Streamline, which is a federal prosecution program that charges immigrants with illegal entry and reentry in criminal courts. I talked directly to law enforcement officials from the police and sheriff's departments, as well as public defenders and prosecutors from the U.S. Attorney's Office for the District of Arizona, which in a post-civil rights context included whites and "racial minorities."

The research for this book spans a decade, the bulk of it conducted between 2001 and 2005. During one of my earliest meetings at the Tucson Border Patrol station, only weeks after 9/11, I wasn't allowed to enter the building for security reasons. The agent kept apologizing for having to meet with me outdoors in the hot sun. (I was pregnant at the time.) But by 2005, I'd collected over 150 interviews with immigration agents, law enforcement officers, elected officials, judges and public defenders, NGOs, migrants, and border residents.<sup>17</sup> Between 2007 and 2009, I conducted primarily archival research at the National Archives and the USCIS library in Washington, DC. I continued archival research and resumed fieldwork in the summer of 2010 after the passage of Arizona's "Papers Please" law (SB1070), and have returned one to two times a year since then.<sup>18</sup>

I often felt that I was chasing a moving target, conducting my research in a state of flux, constantly shifting my observations between the migrant shelters, immigration and criminal courts, border communities, and the archives. This multisited approach (over a ten-year period) undoubtedly offered a unique perspective on immigration law enforcement and border security; however, it also limited my relation-

ships in the field. Every time I returned to a site, there were new faces and accounts of death, smuggling, vigilantism, and hyperpolicing—new cases for criminal prosecution, new prison sentences, and rotating cases of detainees and deportees. I constantly had to reorient myself to my surroundings.

Despite my own border crossing history and my fluency in Spanish and English, I felt like an eternal stranger and outsider, until it finally occurred to me that the border had rendered us all strangers and foreigners in one way or another. With the exception of long-term border residents, most people knew one another, more or less, about as long as I had known them. Even many of the Border Patrol agents were strangers, as many of them had been transferred from other regions or hired quickly when Congress began investing more heavily in border security.

Though I was fully committed to this work, it often felt both wrong and necessary to approach people in those vulnerable moments just after they were deported or released from prison, as I was fully aware that my U.S. citizenship protected me, to an extent, and granted me unequal freedom to move back and forth between Mexico and the United States. In other ways, I felt compelled. Border activist Maria Jimenez once joked that Mexicans are the only ethnic group in this country with their very own police.<sup>19</sup> She was referring to the historical connection between U.S.-Mexico border policing and the social standing of Mexicans in the United States. But her observation also speaks to the power that immigration agents have been given to evaluate and “process people,” then confer a public status.<sup>20</sup> This partially explains why I made federal mandates, legal processes, and enforcement decisions—in which everyone is implicated—my object of study, as if to reorient my gaze or shift the analytic lens for a change.<sup>21</sup>

I overcame my initial misgivings about observing and interpreting what I was seeing when I realized that I too was being watched. The border agents made this very clear each time they stopped and interrogated me. Smugglers let me know when, on more than one occasion, they followed me. One incident stands out in my mind: I had stepped into a church to take field notes, and a smuggler followed me in to let me know that he knew I was watching. The taxi drivers, also associated with the smuggling industry, became suspicious and questioned me when I asked them to drop me off at the Border Patrol station. The Border

Patrol agents also seemed suspicious when I arrived for interviews in a taxi. Border residents surprised me when they casually mentioned that they saw me or heard that I had been in Mexico the day before. Policing permeated every aspect of social life; everyone seemed to be watching.

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For many, the punitive turn in immigration enforcement stems from the attack on the World Trade Center on September 11, 2001. After the reorganization of the Immigration and Naturalization Service (INS) under the newly created Department of Homeland Security in 2003, the agency revised the national border security strategy to “prevent terrorists and terrorist weapons from entering the United States” (alongside unauthorized migration and drugs).<sup>22</sup> However, the day-to-day operations of Border Patrol agents do not involve intercepting terrorists or chemical weapons, nor are border agents apprehending migrants from countries on the “state sponsors of terrorism” or “terrorist safe haven” lists. As Mexico’s drug-related violence makes clear, weapons are more likely to go from the United States to Mexico than the other way around. Although 9/11 linked immigration and national security, this link occurred more in the national imagination than in practice. From a street-level perspective, the most salient feature of border security is not counterterrorism, but a blend of immigration and crime control that began well before the events of September 11.

Despite the rhetorical conflation of immigration with terrorism and national security, then, what border enforcement looks like in practice is little more than domestic crime control extended to an immigration context.<sup>23</sup> A typical day for Border Patrol agents is not intercepting chemical weapons but prosecuting illegal entry and reentry or deporting legal permanent residents, with the support of ICE, on criminal grounds.<sup>24</sup> Agents have yet to apprehend noncitizens on national security charges along the U.S.-Mexico border, much as the weapons of mass destructions failed to materialize in Iraq. Yet in stark contrast to public scrutiny of military expenditures and operations overseas, less is understood about what border security actually looks like domestically, despite widespread bipartisan consensus. Certainly, the border walls, barricades, and deployment of the Border Patrol agents tell a familiar

story about national security and terrorism, but the mundane, less visible practices on the ground tell another.

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This book examines America's new immigration regime, or what scholars have referred to as the "cimmigration crisis," "criminalization of migration," and "'immigrantization' of criminal law."<sup>25</sup> What brought on such an unprecedented approach to migration control that both aggressively punishes and recognizes "humanitarian" principles and procedural protections? How has the focus on criminal history as an enforcement priority affected the on-the-ground policing practices in border communities? What are the ways in which Border Patrol agents, local law enforcement, residents, ranchers, activists, and migrants themselves have come to contest, accept, and enforce growing distinctions between rights-bearing immigrants and "criminals"?

I argue that new enforcement priorities under the Criminal Alien Program fundamentally transformed detention and deportation in ways that merged the immigration and criminal justice systems. CAP expanded in the 1980s to relieve prison overcrowding by deporting noncitizens from jails and prisons. In order to fully implement the Criminal Alien Program, Congress restructured detention and deportation through the passage of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which—among its many controversial provisions—expanded criminal enforcement priorities, enacted retroactive deportation for immigrants with criminal records, instituted mandatory detention, and appropriated the critical funding for information technology and detention beds necessary to make the entire program workable.

My findings show that prison overcrowding in a post-civil rights era of mass incarceration in the United States played a critical role in ushering in many of the changes that merged immigration and crime control. In order to free up prison beds in the rapidly expanding prison system, Congress ordered the Immigration and Naturalization Service to begin targeting noncitizens with convictions for deportation. These new criminal enforcement priorities soon spread from jails and prisons to all other aspects of immigration enforcement.

At the U.S.-Mexico border, agents began processing people according to their criminal history and not just their immigration status. New enforcement mandates directing agents to identify and track “criminal aliens” in their arrest statistics gave border agents authority to distinguish “criminal” from “undocumented aliens.” The new directives established and expanded a criminal alien category that differs from “illegal” status.

New enforcement priorities (that inflict criminal stigma) institutionalize a form of criminalization that differs from illegalization (the act of imposing illegal status).<sup>26</sup> Illegalization imposes a status of nonbelonging. It relegates people to “spaces of non-existence.”<sup>27</sup> It marginalizes people. But it is not inherently a permanent status. Presumably one could alter or adjust immigration status, becoming a legal resident and eventually a naturalized citizen.<sup>28</sup> Unlike “illegal status,” criminal status sticks. The criminal stigma, which for Black and brown youth gets assigned well before arrest and lasts beyond the initial punishment, inflicts “permanent marginalization.”<sup>29</sup> The punitive turn in migration control, particularly the way it imposes a lasting criminal stigma via new enforcement priorities and criminal alien classification, then, must be understood in the context of a historically imposed connection between blackness and criminality.<sup>30</sup>

However, criminalization is not just the application of laws and policies from above. Federal immigration agents’ relation to local players in the field (civil- and human-rights activists, the Mexican Consulate, or local law enforcement, for instance) shapes enforcement actions—at times in the opposite direction of stated policy goals. In the post-civil rights borderlands, local (and national) struggles over migrants and border residents as criminals or rights bearers have created a different enforcement landscape than post-9/11 terrorism and border security discourses would have us believe.

## Overview of the Book

Arizona has played a historic role in immigration politics and criminal justice policymaking. It is an important site for analyzing post-civil rights border policing that combines some of the most punitive approaches to migration control with seemingly contradictory practices to safeguard migrant rights. The Arizona-Sonora borderland straddles

state and federal laws that target immigrants, predominantly Latina/o citizens, and residents in border communities. It has some of the highest levels of arrest, prosecution, sentencing, and deportation along the U.S.-Mexico border. Yet it is also home to one of the most dynamic border- and immigrant-rights movements in the country.<sup>31</sup> Chapter 1 draws on theories linking civil rights and mass incarceration to interpret how the Arizona-Sonora borderlands became ground zero for “prosecutorial” approaches to migration control that aggressively punish while purporting to safeguard rights.<sup>32</sup>

Today’s federal mandate to target immigrants with criminal records has roots in the Department of Homeland Security’s Criminal Alien Program, for which Congress used its legislative discretion to set new enforcement priorities and resources to purge noncitizens from jail and prisons in order to relieve prison overcrowding in the post-civil rights era of mass incarceration. CAP’s success lies in congressional funding for biometric technology and detention beds necessary for “criminal alien” tracking and removal. Chapter 2 foregrounds the story of the current thirty-four-thousand-detention-bed mandate—which permits an unprecedented four hundred thousand deportations each year—in order to show the role that the Criminal Alien Program played in *centering enforcement priorities on criminal history* and blurring the lines between immigration and criminal law enforcement. However, the punitive turn in immigration enforcement is not necessarily a “backlash” to civil rights. Rather, the new immigration regime in place today operates within post-civil rights “antidiscrimination” constitutional frameworks in ways that recognize rights for certain “victims,” while aggressively punishing and banishing those branded as criminal.

Implementing criminal enforcement priorities—even in a punitive state like Arizona—has not been automatic. On the contrary, the federal mandate evoked tensions among border agents, local law enforcement, immigrant advocates, and Mexican officials on the ground. Along the Arizona-Sonora border, this includes migrant-rights advocates such as NGOs or the Mexican Consulate, who publicly oppose the criminalization of migration and pressure the DHS to comply with civil- and human-rights norms. It also includes local police and sheriff’s departments along the border whose budgets depend on revenue from cross-border commerce and do not see migration as a criminal act, or public

defenders in the U.S. Attorney's Office—already overburdened by drug cases—who pushed back on criminally prosecuting unauthorized entry in mass hearings. Chapter 3 highlights the ways in which local actors eventually adopted DHS's criminal enforcement priorities while also engaged in humanitarian interventions and safeguarding migrant rights, within a post-civil rights enforcement terrain.

The criminal alien mandate requires that border agents direct enforcement resources toward high-priority targets, principally those with a criminal record. Rather than processing migrants according to explicit "racial" and "national" criteria, they now distinguish between victims and criminals. Chapter 4 examines how enforcement priorities rooted in the Criminal Alien Program have transformed arrest and removal practices on the border. Because agents apprehend only a small percentage of migrants with a criminal record, they must move to the next priority—such as violating a deportation order—in order to maximize use of detention beds. As new border crossers, first-time apprehended migrants are often those *least* likely to have a criminal record. They were able to leverage that noncriminal and "victim" status to access justice and other forms of relief. Those *most* likely to have a criminal record were border crossers with a longer history of settlement, particularly those who violated a deportation order in order to reunite with families in the United States. In this way, deportation emerges as a pipeline to prison.

New enforcement targets and deployment of more border patrol to the Arizona-Sonora borderlands have inadvertently involved agents more directly in local crime control. This is the flip side to the more familiar scenario of local police and sheriffs who carry out immigration enforcement. Chapter 5 considers the *overreach* of enforcement priorities on citizens and legal permanent residents in predominantly Latina/o border communities who are suspected of or charged with immigration crimes. This differs from the more familiar ways in which law enforcement in Phoenix explicitly (and unapologetically) engages in racial profiling to police brown people. In communities along the international boundary, enforcement practices target residents on criminal grounds, as suspected smugglers. This deflects the racially disproportionate impact on border residents of Mexican ancestry, who are U.S. citizens and legal permanent residents, and generates local support for crime control, even by those it targets.

What does it mean to link “citizenship rights to a person’s criminal history”?<sup>33</sup> Previous chapters having laid out the history and street-level practices surrounding new enforcement priorities, chapter 6 reflects on the Department of Justice’s recent criminal justice reforms, and the Department of Homeland Security’s new Priority Enforcement Program, designed to target “felons, not families.” Evaluating border crossers and borderlanders on the basis of criminal history institutionalizes new forms of criminalization that differ from historic practices of illegalization. The concluding chapter reflects on this shifting enforcement arena and on the global diffusions of criminal enforcement priorities and considers the implications for migrant advocates and academics concerned with race and democracy.